

September 19, 1997

OFFICE OF THE HEARING EXAMINER
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DECISION ON APPEAL OF THRESHOLD DETERMINATION
AND
REVISED REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL

SUBJECT: King County Department of Development and Environmental Services
File No. **L96SD001**
Proposed Ordinance No. 97-380

LENNON/LIGHTFOOT
Appeal of Threshold Determination
and
Shoreline Environment Redesignation

Location: Five parcels (99.23 acres) on the southeastern shore of the Cedar River from the mouth of Molasses Creek to its intersection with the southern edge of the Renton-Maple Valley Highway right of way.

Applicant: Patrick Lennon, 14410 Bellevue-Redmond Road, Bellevue, WA 98007,
represented by: **Robert Johns**, Attorney At Law
Reed McClure, 3600 Columbia Center
701 Fifth Avenue, Seattle, WA 98104

Appellants: **Ronald and Sonya Norton** **Judith Fillips**
15040 - 135th Avenue SE 3405 Southeast 7th
Renton, WA 98058 Renton, WA 98058

Dale Baker, and the Cedar River Alliance, represented by:
Marianne Tagney Jones and **Claudia Newman**
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SUMMARY:

SEPA Decision

Department's Preliminary:	Deny the Appeal
Department's Final:	Deny the Appeal
Examiner:	Grant the Appeal

Recommendation on Shoreline Environment Redesignation

Department's Preliminary:	Approve, subject to conditions
Department's Final:	Approve, subject to conditions
Examiner:	Approve, subject to conditions

PRELIMINARY MATTERS:

Application submitted:	July 12, 1996
Notice of complete application:	August 9, 1996
Notice of appeal received by Examiner:	May 8, 1997
Statement of appeal received by Examiner:	May 8, 1997

EXAMINER PROCEEDINGS:

Pre-Hearing Conferences:	May 27, 1997 and June 13, 1997
Hearing Opened:	July 29, 1997
Hearing Closed:	August 1, 1997

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County
Hearing Examiner.

ISSUES ADDRESSED:

- SEPA: - Salmon and Wildlife habitat impacts
- Proposal definition and phasing
- Shoreline environment redesignation

FINDINGS AND CONCLUSIONS:

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:**A. Introduction and Procedural Background**

1. On July 12, 1996 Patrick Lennon filed an application to redesignate approximately 1,200 linear feet of shoreline along the Cedar River from Conservancy to Urban. The proposed reclassification affects the shoreline within the northwest portion of an approximately 99 acre holding comprising five parcels located along the south shore of the Cedar River south of SR 169 and west of 140th Way Southeast. As originally proposed by the Applicant, the 80 feet nearest the river would remain in a Conservancy designation with a parallel upland strip containing the remainder of the 200 foot shoreline environment reclassified to Urban.
2. The two northern parcels subject to this application are currently undeveloped, although a large water quality treatment pond recently constructed to serve the Applicant's Cedarwood project lies just off site at the northeast corner. In the vicinity of the current application, the property has a mixed development history, having been used for many years for a gravel extraction operation which was chronically under citation for environmental problems. In 1994 the entire 99-acre property was included within the County's Urban Growth Area and given an R-4 zoning classification. In addition to bordering the Cedar River, the portion proposed for redesignation is also crossed within its southern half by Molasses Creek. Since both streams are salmonid bearing waters, both the Cedar River and Molasses Creek are protected by 100 foot buffers pursuant to the County's Sensitive Areas Ordinance.
3. The Cedar River jurisdictional shoreline area affected by this application contains about 5.5 acres. The half of the 200 foot jurisdictional area which is closest to the river gently slopes down from an upland valley table about 25 feet above the mean river level. This sloped area is currently densely vegetated with shrubbery and deciduous trees, with cottonwoods, alders and willows predominating. Much of this sloped area is also within the 100 year flood plain for the Cedar River.

The outer 100 feet of the shoreline jurisdictional area has been denuded of vegetation, both as a result of earlier gravel pit operations as well as from recent grading by the current owner. As described by the Applicant, future residential development activity is expected to remain on the north side of Molasses Creek, which translates into an affected shoreline jurisdictional area of primary concern encompassing approximately 4 acres.

4. The 99 acre property of which this application forms a part, although zoned R-4, is highly constrained for future development. In addition to the Cedar River and Molasses Creek shorelines previously described, the property is also burdened by steep slope areas, a Bonneville power easement across its southern half, and resulting obstacles to the provision of vehicle and utility service access. Of the three principal development pods that the Applicant has identified, only the northernmost one nearest the Cedar River and subject to this redesignation application possesses convenient road access via SR 169.
5. A Mitigated Determination of Non-significance ("MDNS") was issued by the King County Department of Development and Environmental Services for the proposed shoreline redesignation on April 8, 1997. The MDNS conditions stipulate that the 100 feet of shoreline area closest to the Cedar River shall retain its Conservancy designation while the redesignation to Urban shall be limited to the outer 100 feet. In addition, in order to mitigate the impacts

from increased site density and human intrusion into the shoreline area, a vegetation enhancement plan is required for those portions of the shoreline which are to remain in the Conservancy designation. Timely appeals of the MDNS were filed by area residents Ronald and Sonya Norton and Judith Phillips and by the Cedar River Alliance.

6. Pursuant to prehearing conferences held by the King County Hearing Examiner's office on May 27 and June 13, 1997, a prehearing order was issued June 20, 1997, which defined the issues on appeal with respect to the SEPA threshold determination. These issues include degradation of salmonid habitat within the Cedar River and Molasses Creek, habitat impacts affecting other wildlife species, hydraulic impacts from surface water runoff, impacts to groundwater quality and quantity within the underlying aquifer system, landslide and erosion impacts from soils instability, potential noise impacts, and cumulative impacts to the Cedar River and Molasses Creek systems, including the precedential effect that approval of the proposal might have. In addition to these potential substantive impacts the prehearing order also identified procedural impacts raised by the Appellants, including improper phrasing of SEPA review.
7. The Examiner's initial SEPA decision and report and recommendation on the shoreline redesignation request was issued on August 8, 1997. The shoreline recommendation was to approve the Urban redesignation request for the outer 100 feet of the shoreline environment conditioned upon the prior performance of an EIS analyzing adverse environmental impacts and a review of such impacts to determine their level of acceptability. In an August 21, 1997, revision to Pre-effective Condition No. 1 of the shoreline recommendation the Examiner imposed an additional requirement that the Applicant convey a public trail easement to the County. The Examiner's August 8, 1997, decision and report and recommendation, as revised, were subject to reconsideration requests received from both the Applicant and the SEPA Appellants.
8. In his reconsideration order the Examiner concluded that the reconsideration requests were largely for re-evaluation of the factual record, and upon review of that record the Examiner determined the original findings and conclusions to be supported by the evidence. However, the Examiner did grant the Applicant's reconsideration request with respect to the revised pre-effective condition requiring conveyance of a public trail easement, concluding that the imposition of such a condition on the Applicant was beyond the County's regulatory authority. This conclusion also required the Examiner to reconsider his initial recommendation to currently approve the redesignation request, which in this revised report has been replaced with a recommendation that the redesignation application be remanded to the Hearing Examiner for further review after an EIS on the proposal has been completed.

B. SEPA Threshold Determination Appeal

9. Although no specific development proposal has been submitted in conjunction with the shoreline redesignation request, it is clear from the application materials and Mr. Lennon's hearing testimony that the purpose of the reclassification is to allow him to maximize development within the flat, easily accessed areas of the property adjacent to SR 169. Since the R-4 zoning allows the construction of multi-family housing and the transfer of density from undevelopable to developable portions of the site, in the absence of a Conservancy shoreline

designation the existing zoning would allow multi-family residential development to be located on the property right up to the boundaries of the 100-foot stream buffers required by the SAO for the Cedar River and Molasses Creek. While the current Conservancy shoreline designation does not prohibit residential development in the 200-foot shoreline area, it prohibits multi-family development. Therefore, currently only single family lots are allowed in this area consistent with the underlying zoning. Thus, if the approximately two acres of Conservancy shoreline environment which lies outside of applicable SAO stream buffers is subdivided pursuant to R-4 base density provisions, eight new single family lots could be created.

10. If, however, the outer 100 feet of the shoreline environment were redesignated from Conservancy to Urban in order to allow multi-family development, the quantity of residential development which the Applicant could place on the two acres would be limited only by the carrying capacity of the land and applicable height and setback restrictions. This is because the zoning regulations would permit an unlimited transfer of units from other portions of the 99 acre site to this flat buildable area. In response to the prehearing order's requirement for a "worst case" scenario analysis, the Applicant has submitted a conceptual site plan showing a potential 70 units within the two-acre redesignation portion of the shoreline area. This projection is consistent with the Applicant's environmental checklist, which identified the potential to locate as many as 89 units on the two northern parcels within the area east of the Cedar River and north of Molasses Creek. These 89 units comprise part of a conceptual plan for a 228-unit multi-family development to be constructed on the subject site in conjunction with the property adjacent to the east also owned by Mr. Lennon.
11. Although the Applicant's nonproject action checklist contains little in the way of specific detail, in nine separate places it recites that "the requested permit is required in order for the portion of the site located directly adjacent to the river to be conveyed to King County as part of the proposed regional trail system", or other words to such effect. Further review of the SEPA file confirms that conveyance to the County of the trail easement is a *quid pro quo* for the granting of the shoreline redesignation. A May 21, 1996, SEPA Section memo describing a meeting with the Applicant observes that "Mr. Lennon stated in the meeting that the purpose for requesting a redesignation of the shoreline from Conservancy to Urban was to achieve a higher density for the multi-family development and that the Applicant's agreement to sell the trail easement to King County would be contingent upon approval of the shoreline redesignation." Although the actual status of this transaction is not clearly documented, later notes in the SEPA file dated near the end of March 1997 suggest that the Department of Parks and Cultural Resources is negotiating for purchase of an 80-foot easement adjacent to the Cedar River for connection to the Soos Creek trail. The initial expectation appears to be that a 16-foot wide trail would be constructed within a 20-foot cleared right of way, with actual construction of the trail not likely to occur for another five years.
12. While various ramifications of Mr. Lennon's proposal seem to have been discussed at length within the SEPA review process, such review appears not to have included in any significant degree its environmental impacts. Thus, there is no indication whatever that the potential environmental impacts of trail development adjacent to the Cedar River were analyzed. More surprisingly, even the fisheries and wildlife impacts of Mr. Lennon's proposed redesignation itself and the resultant increase in housing density were never discussed with the DDES staff ecologists responsible for review of such issues. At the public hearing for this proceeding three County natural resources experts testified with respect to the impacts of this proposal,

and all stated that they were unaware of the proposal until approximately two weeks before the hearing and more than three months after the MDNS was issued. Moreover, the SEPA staff report suggests that as of the date of the hearing the SEPA Section was still regarding the worst-case scenario resulting from redesignation to be an increase of six units derived from the R-4 zone's base density, not the more than 60-unit increase that density transfer would permit as plainly implied from the outset within the Applicant's checklist.

13. Turning to fisheries issues, it is uncontested that the stretch of the Cedar River adjacent to the Applicant's site is a highly productive salmonid spawning and rearing habitat. Species identified as making use of this habitat include sockeye, Chinook and coho salmon and steelhead and cutthroat trout. The upper reaches of Molasses Creek are also considered good spawning habitat, particularly for coho salmon. There is general agreement among agency fisheries biologists, including not only County staff but also representatives from the Washington Department of Fish and Wildlife and the Muckleshoot Tribe, that Cedar River sockeye, coho and steelhead stocks are severely depressed, with sockeye reportedly being considered for Federal listing as an endangered species.

14. There was also considerable unanimity among fisheries experts regarding the importance of riparian habitat to salmonid spawning and rearing. A good summary of the functions performed by an intact riparian habitat which are critical for fish survival and productivity is contained in a document issued December 1996 by the Washington Department of Fish and Wildlife entitled "Management Recommendations for Washington's Priority Habitats: Riparian":

"Vegetation in riparian areas shade the stream, thereby maintaining cool temperatures needed by most fish. Plant roots stabilize stream banks and control erosion and sedimentation. Riparian vegetation creates overhanging cover for fish. Riparian habitat contributes leaves, twigs, insects, and other organic material to the stream, thereby providing basic food and nutrients that support fish and aquatic life. Large trees that fall into the stream create pools, riffles, backwater, small dams, and off-channel habitat that are necessary to fish for cover, spawning, rearing, and protection from predators. Pools help maintain riffles where gravel essential for spawning accumulates. Riparian vegetation, litter layers, and soils filter incoming sediments, pollutants, and pesticides, thereby assisting in the maintenance of high water quality needed for healthy fish populations."

15. Upland development and river channel stabilization activities over a period of time have created within the lower Cedar River a shortage of large woody debris, a circumstance which was identified by Muckleshoot biologist Martin Fox as a factor limiting spawning production within the low gradient run adjacent to the Applicant's property. Therefore, maintenance of a vegetated riparian buffer in conjunction with a development regime conducive to continued recruitment of large woody debris to the river system was a major concern of most witnesses. Large trees within Puget Sound lowland riparian zones average over 150 feet in height, meaning that native vegetation buffers of widths less than this height tend to place such trees at risk. This occurs because nearby upland development will seek the removal of mature trees as hazards when they reach a height where they are capable of falling onto developed areas. Testimony identified six large deciduous trees on the property near the river bank which are

prime candidates for recruitment as future large woody debris within the river habitat, although the consensus was that conifers make superior recruitment candidates. No conifers were identified on the Applicant's site within the shoreline jurisdiction.

16. While there was general agreement that the other riparian habitat functions identified within the State's "Priority Habitat" report were also being provided on the Applicant's property within the wooded shoreline buffer next to the Cedar River, the second primary issue upon which focus was placed concerned the need to protect the riparian habitat from human disturbance. The agency fisheries biologists were of the opinion that higher residential density results in a greater incidence of buffer disturbance from not only fugitive trails cut through the buffer to obtain access to the river, but also from removal of tall vegetation for residential view improvement. County, State and tribal biologists stated that narrow buffers adjoined by high density human activity will result in buffer degradation and riparian habitat impacts, a conclusion supported by a 1990 study performed regarding native growth protection easements which reported that nearly 70% of stream buffers investigated had been altered or degraded.
17. As noted by Gino Lucchetti, who served as its lead ecologist, the County's recently adopted Cedar River Basin Plan not only seeks to maintain a productive aquatic habitat for the Cedar River but also to restore it where feasible. The Plan's basin-wide policies encourage the removal of structures from the floodplain, restoration of small habitat areas, enhancement of sockeye habitat production, implementation of water quality improvements, and creation of incentives for streamside forest retention. Mr. Lucchetti noted that since 1994 King County has spent approximately \$2,000,000 on habitat restoration along the Cedar River and another \$6,000,000 on lands acquisition. He also observed that the County's efforts were in addition to those being implemented by the cities of Renton and Seattle and by the Muckleshoot Tribe. In his view, the Applicant's redesignation request was not consistent with the goals of the recently adopted Cedar River Basin Plan.
18. Because the stretch of the lower Cedar River which encompasses the Applicant's property is a productive salmonid habitat, the riparian corridor also functions to support abundant wildlife as well. Area residents offered testimony and photographs showing use of this area by bald eagles, blue heron, beavers, otter, kingfishers, redbird hawks, ducks and geese, deer, weasels, mink, coyote and other animals. This intensive use of the corridor for wildlife habitat was confirmed by Dr. Kate Stenberg, Wildlife Program Manager for the King County Department of Natural Resources, who also pointed out that this area possesses good habitat connectivity both upstream and downstream to tracts of lands in public ownership. Dr. Stenberg was especially concerned with the adverse impacts to wildlife that increased density would cause resulting from both direct human intrusion into habitat areas and the predatory activities of domestic dogs and cats.
19. The testimony of the agency fisheries and wildlife biologists and the literature submitted to the record suggest that while a 100-foot buffer width of native vegetation performs important habitat functions, it is less than optimal for maximizing habitat protection and values. As noted previously, fisheries biologists prefer a buffer width of at least 150 feet of natural vegetation in order to assure large woody debris recruitment. All experts agreed that risk of human intrusion increases as buffer width decreases. Dr. Stenberg noted that the County has required 150-foot buffers in heron feeding areas and 200-foot buffers for bald eagle habitat. In her view a 100-foot buffer confers inadequate wildlife protection, with the threshold of adequacy

beginning at approximately the 200-foot width. She stated that adverse impacts to wildlife habitat begins to occur when density increases above one dwelling unit per acre. Thus, even a six unit increase in base density for single family development on the Applicant's parcel in her view would be impactful. She regarded the multi-family development described within the worst-case scenario to entail a very significant adverse impact to wildlife habitat.

Land Use Services Division fisheries biologist Don Finney, on the other hand, stated that perhaps a six unit increase in density behind a 100-foot buffer of native vegetation might be acceptable from a fisheries impact standpoint if tree loss for large woody debris recruitment could be avoided. He testified, however, that under the worst-case scenario a 100-foot vegetated buffer would be insufficient to protect against significant adverse impacts to fisheries resources within the Cedar River riparian habitat. All the agency resource witnesses agreed that the element of direct human intrusion could be reduced by fencing but that fencing alone would not be sufficient mitigation for the range of impacts anticipated.

20. Although spawning also occurs in Molasses Creek, and the proposed shoreline redesignation would have the effect of allowing an increase of multi-family units near its mouth just beyond the Creek's SAO buffer, expert testimony did not focus to any great degree on these impacts. In part this may be due to the fact that the Creek's prime spawning area appears to be further upstream, in addition to the expectation that all urban development site drainage will be directed to the Cedar River.
21. Regarding the remaining issues identified within the prehearing order relating to substantive environmental impacts, the SEPA Appellants have failed to sustain their burden of proof to demonstrate that such effects are likely to occur. No evidence at all was introduced on potential noise impacts nor concerning onsite soils instability. The fact that the portion of the site subject to the redesignation request is relatively flat argues against any obvious occurrence of landslide and erosion impacts. In like manner, although there was a recognition that an aquifer system underlies this area generally, the Appellants did not attempt to quantify the potential impacts resulting from development allowed by the redesignation request on the aquifer system. Finally, while concern was expressed by fisheries biologists with regard to fish egg mortality resulting from flood level flows within the Cedar River, the relatively minor contribution that the two-acre site subject to redesignation would make to such problem does not support a finding of a significant adverse impact.

C. Shoreline Redesignation Application

22. Since 1978 when the King County Shoreline Master Program was adopted, the entire Cedar River within unincorporated King County has been designated Conservancy. Although a major resource, the Cedar River lacks the mean annual flow to qualify as a shoreline of state-wide significance. The current application to create parallel shoreline environments consisting of Conservancy within the waterward 100 feet and Urban within the landward 100 feet would be the first deviation from the County's established policy to provide a uniform Conservancy shoreline designation for the Cedar River.
23. KCC 25.32.130 provides the standards pursuant to which a shoreline environment redesignation is to be evaluated. It requires findings that the new designation will be consistent

with the statutory policy stated at RCW 90.58.020; with the goals, objectives and policies of the County's Master Program; and with the designation criteria for the shoreline environment requested. In addition, the application must comply with the zone reclassification procedures stated at KCC 20.24.190. With respect to this redesignation request, KCC 20.24.190D requires the Applicant to demonstrate with substantial evidence that since its last previous shoreline environment designation the conditions or circumstances affecting the property have undergone unanticipated substantial and material change which affects such property in a manner and degree different from other properties in the vicinity. It also must be demonstrated that the requested redesignation is in the public interest.

24. As recited within his redesignation application, the Applicant contends that the changed circumstances affecting the property consist of the following:

"The entire area in the vicinity of the subject site, along the Cedar River and adjacent SR 169 has experienced change to Urban levels of development. SR 169 has recently been widened and there has been a significant increase in development activity in the immediate vicinity of the site."

At the public hearing the Applicant's attorney expanded upon this representation by citing not only the reconstruction of Highway 169 and the general neighborhood development pattern but also expansion of 140th Way Southeast east of the site to five lanes, the Urban zoning applicable to the property, its inclusion in the County's Urban Growth Area, and the extension of sewer and water service to the area. The Applicant's attorney cited as a unique circumstance that this property was the only reclaimed sand and gravel operation in the neighborhood. Both the Applicant's attorney and the Shoreline Administrator asserted the redesignation was in the public interest because it would facilitate construction of more housing in the Urban area.

25. In addition to the SEPA Appellants and other neighborhood residents, the proposed shoreline redesignation has been opposed by agencies representing the City of Renton. In a November 25, 1996, memorandum the City's Parks Director points out that the property also falls within the City's Urban Growth Area and its current designation is consistent with the City's Conservancy shoreline classification for the Cedar River within the City limits. The memorandum also points out that the Maplewood Golf Course just upstream from the project, while currently in unincorporated King County, is owned by the City, which supports its current Conservancy designation. The Renton Parks Director summarized this position as follows:

"We do not recommend any designation other than Conservancy for the area as outlined in the Lennon/Lightfoot requests (File No. L96SD001). Any other designation would be piecemeal and does not meet the intent of what is occurring on both sides of the proposed project area...The change would allow for increased developed adjacent to an area the City has designated Conservancy in the Shoreline Master Program and also as Conservancy within the Cedar River Greenway. The City's adopted Cedar River Greenway Plan indicates that the area adjacent to this site remain as natural open space with no development. The Plan does not recommend developed trails at this location."

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.
2. Under SEPA a proposal is stated to be a proposed action. WAC 197-11-060(3)(a) requires agencies to "make certain that the proposal that is subject to environmental review is properly defined." Subsection (b) mandates that "proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document." A proposal is considered closely related to another proposal if the two "cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them."
3. As the Applicant has made clear within both his environmental checklist and subsequent discussions with SEPA staff, his functional proposal is to obtain an environmental designation which allows him to build multi-family housing in the outer 100 feet of shoreline jurisdiction on his property in exchange for a public trail easement within the inner 100 feet. It was an error for the SEPA official to exclude from environmental review for this application consideration of the environmental impacts of those elements of the proposal entailing construction of a public trail within the vegetated environment adjacent to the Cedar River on the Applicant's site.
4. The SEPA record discloses that King County DDES failed to actually consider the most serious probable environmental impacts which will be generated by the Applicant's proposal. This includes not only the environmental impacts of the proposed public trail development which is the stated *quid pro quo* for the Applicant's redesignation approval, but also even the impacts upon salmonid spawning and wildlife habitat within the Cedar River riparian system which would result from simply the redesignation request alone. Moreover, the sparse environmental analysis that did actually occur during the DDES SEPA review prior to the MDNS seems to have been based on a scenario that envisioned the worst-case impacts as constituting merely exposure of the site to development at the R-4 base density rather than the major transfer of multi-family density envisioned by the Applicant and disclosed in the checklist. In view of this fundamental absence of actual consideration of relevant environmental impacts, the SEPA official's threshold determination is not entitled to substantial weight on review.
5. It was the unanimous testimony of County, State and tribal biologists engaged in the review of fisheries and wildlife habitat issues that a 100-foot buffer of native vegetation retained along the Cedar River adjacent to multi-family development at the densities permitted after redesignation of the outer 100 feet of shoreline to Urban would be insufficient to protect existing salmonid and wildlife resources and habitats from significant adverse environmental impacts. Species of importance which use the riparian corridor adjacent to the Applicant's property are the salmon and trout that spawn and rear in this habitat, and a wide array of wildlife, including bald eagles, other raptors, heron, otter, beavers, and water fowl which forage within this resource. According to these agency biologists, the impacts from adjacent

development of the Applicant's worst-case scenario would be significant and adverse even if the entire 100-foot inner buffer were allowed to remain intact. Needless to say, the additional inclusion into the proposal of a major pedestrian and nonmotorized vehicle public trail within the 100 feet closest to the river would greatly increase both the probability and the significance of these impacts. Based on the record, therefore, the determination of nonsignificance issued by the County SEPA official is clearly erroneous and an Environmental Impact Statement should be prepared for this proposal.

6. Although rendered somewhat moot by our conclusion that the Cedar River riparian environment adjacent to the Applicant's property in itself contains sufficient resource value to require an EIS, it is appropriate to also address some of the SEPA Appellants' contextual arguments. First, we essentially agree that SEPA review was improperly phased, but the improper phasing was deferral of consideration of the impacts of trail development not the absence of a specific upland housing construction application. Second, the precedential effect of the redesignation also depends on the role played by the trail component of the proposal: if there is no trail, then the precedential effect becomes very high because there is nothing which distinguishes this request from any other which could be made within the Urban-zoned portion of the Cedar River shoreline. Finally, the cumulative impacts of continuing to nibble away at the Cedar River riparian environment are adverse and significant, as substantiated by the recently adopted Basin Plan and its supporting documentation.
7. Due to the obvious development pressures which this application represents, it is also useful to define the point at which reduction of potential development impacts on the Applicant's site may reach the point where adverse effects are less than significant and an MDNS can be issued. Based on the record before us, this point appears to occur when a proposed trail of adequate width is moved further upland beyond the waterward 100 feet of the shoreline area and the vegetated riparian environment is placed behind a sturdy fence within a sensitive area tract. Such a configuration would allow the vegetated riparian slopes to remain intact, place all development on the already disturbed upland table, reduce the maximum feasible multi-family housing density within the remaining shoreline area by about half, and remove such housing far enough from the river that tall trees within the riparian environment would not be considered hazardous.

Such a reconfiguration would not eliminate all potential development impacts to the shoreline area, but would render them less than significant and allow them to be mitigated within an MDNS. The SEPA decision provides the Applicant with an option to revise his proposal consistent with this discussion in order to secure an MDNS in lieu of performance of an EIS.

8. The policies underlying the Shoreline Management Act are stated at RCW 90.58.020. In addition to seeking to protect the natural environment against adverse impacts to its vegetation and wildlife, a primary policy is to foster rational planning in order to avoid the inherent harm which results from an uncoordinated and piecemeal development of the state's shorelines. Within this context the statutory policy also favors increasing access to shorelines for members of the public. The Applicant's proposal is inconsistent with this policy to the extent that it attempts to divorce planning for the proposed public trail from the shoreline designation review. The various Master Program elements within the County's shoreline program generally reflect the policies stated at RCW 90.58.020 in that they favor public access and appropriate development so long as unique and fragile areas of the shoreline are protected from

adverse impacts.

9. While development of a public trail would appear to be equally permitted in both the Conservancy and Urban shoreline environments, the prospective construction of a major public trail becomes a factor in evaluating whether the Urban or Conservancy designation criteria are more appropriately met by the outer 100 feet adjacent to the Cedar River on the Applicant's property. Without the public trail, there would be no basis to replace the current Conservancy designation, which emphasizes maintaining the natural character of the shoreline and protecting, conserving and managing existing natural resources. On the other hand, if a public trail is indeed constructed at this location, such action would enhance visual and physical access to this shoreline environment and its multiple use character, outcomes more consistent with the Urban designation. While there can be no serious doubt that development of a major public trail so close to the Cedar River would cause a degree of irreversible degradation to fisheries and wildlife habitat, such a policy choice is not foreclosed to the County so long as relevant environmental factors are adequately identified and analyzed.
10. In like manner, the decision whether or not to build the public trail within this shoreline location may also impact the changed circumstances analysis applicable to this redesignation request. As presented in its application and at the public hearing, nothing in the changed circumstances identified by the Applicant affect his property in a manner and degree different from other similarly situated properties so that a quasi-judicial redesignation is appropriate rather than an area-wide review of Cedar River shoreline designations generally. The highway construction, the urbanization, the enactment of new Comprehensive Plan Policies and zoning designations which have occurred since 1978 undoubtedly all add up to changed circumstances, but they are changes which affect all shorelines within the lower Cedar River area in a similar fashion.

Moreover, the pattern of regulatory changes do not uniformly support further unrestricted urbanization in this part of the County. Notwithstanding the Urban Growth Area designation within the Comprehensive Plan, the County's Sensitive Areas Ordinance, its drainage regulations, and the just adopted Cedar River Basin Plan all focus on enabling the vital habitat resources of the Cedar River to co-exist successfully with nearby urban development. In particular, the Basin Plan and the SAO regulations argue more strongly in favor of retaining the Conservancy environment than for changing it.

11. The only changed circumstance which seems to be legitimately unique to this property is the proposed public trail. The site's prior use as a gravel pit is an interesting historical fact, but fundamentally irrelevant to a review of its appropriate shoreline designation. If the County does in fact decide to construct a public trail within the shoreline buffer adjacent to the Cedar River on the Applicant's property, this would constitute a changed circumstance in favor of public access and multiple use that supports an abandonment of a strict Conservancy designation for the adjacent upland area. A decision to locate a widely used public trail in this section of the Cedar River would create a public interest in permitting upland housing development of a more intensive nature consistent with a policy to prefer public access at this location over fisheries and wildlife habitat protection.

However, such a decision can only be rationally made after the environmental consequences of the proposed action have been disclosed and studied within an EIS. Accordingly, any decision

to redesignate the upper portion of the Applicant's shoreline to Urban as requested must be deferred until completion of an EIS on the proposal in order to assure adequate consideration within the decision-making process of identified environmental impacts, guarantee that the planning process for this valuable shoreline environment is not conducted in an uncoordinated and piecemeal fashion, and verify that changed circumstances warranting Urban redesignation and supporting the public interest will indeed occur. See WAC 197-11-406 and RCW 90.58.020.

DECISION:

The SEPA threshold determination appeal of Ronald and Sonya Norton, Judith Fillips and the Cedar River Alliance is GRANTED. An Environmental Impact Statement is required to disclose the significant adverse environmental impacts of the proposal to redesignate the outer 100 feet of the Applicant's property within the Cedar River shoreline jurisdiction from Conservancy to Urban in order to allow multi-family development thereupon in exchange for conveyance of a public trail easement within the 100 feet of the shoreline area nearest the river. Performance of this EIS may be combined with an EIS for the larger public trail system component as a whole.

PROVIDED THAT: No EIS shall be required and an MDNS shall be issued if the Applicant revises his proposal so that a public trail easement at least 40 feet in width located more than 100 feet landward of the Ordinary High Water Mark for the Cedar River and adjacent to the retained Conservancy riparian shoreline environment will be conveyed to King County. In such instance the conditions attached to the MDNS issued by King County on April 8, 1997, will be sufficient to mitigate adverse environmental impacts if augmented by a requirement that fencing approved by DDES is placed along the waterward boundary of the trail easement to keep pedestrians and animals out of the riparian environment and said 100-foot riparian area is placed in a permanent sensitive areas tract.

RECOMMENDATION:

REMAND the subject shoreline redesignation request to the Hearing Examiner for further review after completion of the EIS for the proposal or, alternatively, issuance of an MDNS as specified above; provided that, if no final EIS or MDNS is issued within four years of the date of this decision, the application shall be deemed withdrawn.

ORDERED this 19th day of September, 1997.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 19th day of September, 1997, to the following parties and interested persons:

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Larry Gossett, Metropolitan King County Council
Larry Fisher, Washington State Department of Fish & Wildlife
Gino Lucchetti, King County Water and Land Resources
Kate Stenberg, King County Water and Land Resources

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) on or before October 3, 1997. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before October 10, 1996. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse,

prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the date on which the Council passes an ordinance acting on this matter.

MINUTES OF THE JULY 29 AND 30, 1997, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L96SD001 - LENNON/LIGHTFOOT

Stafford L. Smith was the Hearing Examiner in this matter. Participating at the hearing were Barbara Heavey, Mark Mitchell, Gino Lucchetti, Kate Stenberg, and Don Finney representing the County; Larry Fisher, Tom Uren, Ted Schepper, Richard Fleming, Bob Johns, Ronald Norton, Sonya Norton, Maryanne Tagney Jones, Judith Phillips, Claudia Newman, Rick Lennon, Marilyn Whitley, Stan Pawlak, Ann Dias, Jack Lyons, Rod Malcom, Martin Fox, and Mark Peterson.

The following exhibits were offered and entered into the hearing record July 29, 1997:

Exhibit No. 1	Department of Development and Environmental Services, Land Use Services Division, Report to the Hearing Examiner
Exhibit No. 2	Determination of Nonsignificance (Mitigated) for Lennon/Lightfoot L96SD001, issued April 8, 1997
Exhibit No. 3	Environmental Checklist dated July 12, 1996
Exhibit No. 4	Appeal letter from Ronald and Sonya Norton, received April 29, 1997
Exhibit No. 5	Appeal letter from Claudia M. Newman on behalf of Judith Phillips, Dale Baker and the Cedar River Alliance, received April 29, 1997
Exhibit No. 6	SEPA file
Exhibit No. 7	GIS vicinity map (submitted at hearing)
Exhibit No. 8	Map of parcel prepared and submitted by Applicant illustrating various features
Exhibit No. 9	Priority Habitats and Species List - January 1996
Exhibit No. 10	Management Recommendations for Washington's Priority Habitat and Species - May 1991
Exhibit No. 11	Management Recommendations for Washington's Priority Habitats: Riparian - December 1996
Exhibit No. 12	Summary: 1992 Salmon and Steelhead Stock Inventory (SASSI)
Exhibit No. 13	Native Growth Protection Easements - Survival and Effectiveness - June 1990
Exhibit No. 14	Draft Proposed Lower Cedar River Basin and Nonpoint Pollution Action Plan by Watershed Management Committee
Exhibit No. 15	Aerial photographs of site taken in 1974 and 1980
Exhibit No. 16	Site photographs taken July 1997 with location descriptions
Exhibit No. 17	Conceptual Development Plan
Exhibit No. 18	Topographic map with shoreline boundaries
Exhibit No. 19	Cross-section of site
Exhibit No. 20	Site and vicinity map
Exhibit No. 21	Phase 2 Environmental Site Assessment Cedar River at Renton-Maple Valley Road
Exhibit No. 22	Petitioner's application for shoreline environmental redesignation received July 12, 1996
Exhibit No. 23	Applicant's environmental checklist and supporting information received July 12, 1996
Exhibit No. 24	Preliminary Report to the Hearing Examiner on application for Shoreline Environment Redesignation dated July 29, 1997

- Exhibit No. 25 Affidavit of Publication of Notice of Permit Application
 a. Valley Daily News, August 21, 1996
 b. Seattle Times, August 21, 1996
 c. Seattle Times, October 30, 1996
- Exhibit No. 26 Affidavit of Publication of Notice of Public Hearing - Seattle Times, July 10, 1997
- Exhibit No. 27 Affidavit of Posting
 a. Notice of application August 19, 1996
 b. Notice of application October 25, 1996
 c. Notice of public hearing July 1, 1997
- Exhibit No. 28 a. Excerpt from shoreline Management Guidebook, Second Edition 1994, Volume I, Chapter 14 comprising of six pages regarding Parallel Designations
 b. Letter dated May 28 1997, from Robert J. Fritzen (Washington State Department of Ecology) to Mark Mitchell

The following exhibits were offered and entered into the hearing record July 30, 1997:

- Exhibit No. 29 Maps showing King County Shoreline Environments
- Exhibit No. 30 Statement submitted by Fred Lorenz
- Exhibit No. 31 Statement submitted by Linda M. Wippel
- Exhibit No. 32 Letter and photographs submitted by Mrs. J.A. Booth
- Exhibit No. 33 Letter dated July 29, 1997, from Barbara Brock to Stafford L. Smith
- Exhibit No. 34 Letter dated July 29, 1997, from Wesley M. Brock to Stafford L. Smith
- Exhibit No. 35 Memorandum dated July 29, 1997, from Marilyn P. Whitley to Hearing Examiner
- Exhibit No. 36 Photographs (3) of wildlife taken by Sharon Dimitriou
- Exhibit No. 37 Photographs (10) taken in Spring 1997 from Norton shoreline
- Exhibit No. 38 Cedar River Current and Future Conditions - Summary Report, October 1993
- Exhibit No. 39 Letter dated November 25, 1996, from Muckleshoot Indian Tribe to Anne Knapp, Shoreline Planner
- Exhibit No. 40 Memorandum dated November 25, 1996, from Leslie A. Betlach, Parks Director, City of Renton, to Karen Codiga, Development Services
- Exhibit No. 41 Letter dated November 25, 1996, from Gregg Zimmerman, City of Renton, to Mark Mitchell, Shoreline Administrator
- Exhibit No. 42 Letter dated April 9, 1997, from Robert Fritzen (Wash State Dept of Ecology) to LUSD
- Exhibit No. 43 Letter dated May 28, 1997, from Robert J. Fritzen to Mark Mitchell
- Exhibit No. 44 "The Importance of Imperviousness," Watershed Protection Techniques, Vol 1, No. 3, Fall 1994, pp. 100-111.
- Exhibit No. 45 "The Peculiarities of Imperviousness," Watershed Protection Techniques, Vol 2, No. 1, Fall 1995, pp. 233-238.
- Exhibit No. 46 Excerpt Cedar River Current and Future Conditions Report, November 1993 (second printing)
- Exhibit No. 47 Vesely, James "Lake Washington sockeye and the Cedar River plan," The Seattle Times, March 24, 1997.
- Exhibit No. 48 Jesernig, Jim "Planning for salmon and our farmlands," Special to The Seattle Times, March 21, 1997.
- Exhibit No. 49 Tracy, George "Help save our Cedar River - nature's way," South County Journal, March 15, 1997.
- Exhibit No. 50 Nilson, Barbara "Teamwork saves safe spawning stream for sockeye salmon," Voice of the Valley, September 18, 1996.
- Exhibit No. 51 Simon, Jim "Deal will let salmon return to city's main water supply," The Seattle Times, March 21, 1997.
- Exhibit No. 52 Lange, Larry "Experts trying to stem decline in Cedar River salmon run," The Post Intelligencer, October 17, 1992.
- Exhibit No. 53 Foster, George "Cedar River targeted for restoration," The Post Intelligencer, June 21, 1993.
- Exhibit No. 54 Correspondence among Rick Batista (BALD), Eric Stockdale (Resource Planning), James Miller (GeoEngineers, Inc), Bob Zeigler (Wash. State Department of Game), and Derek Booth (SWM)
- Exhibit No. 55 The Associated Press "Flooding takes a toll on fish runs," The Post Intelligencer, May 15, 1997.
- Exhibit No. 56 Priority Habitat Management Recommendations: Riparian, March 1995 draft